

DATE: June 30, 2011

MEMO CODE: SFSP 17-2011

SUBJECT: Automatic Revocation of Tax Exempt Status

TO: Child Nutrition Programs

The Internal Revenue Service (IRS) has recently changed its filing requirements for some tax-exempt organizations. Failure to comply with the requirements may result in the revocation of an organization's tax-exempt status by the IRS. Section 13(a)(7) of the Richard B. Russell National School Lunch Act (NSLA) allows the participation of a private nonprofit organization in the Summer Food Service Program (SFSP) if, among other things, it is an organization "described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code...." [42 USC 1761(a)(1) and (7)].

SFSP regulations at 7 CFR §225.2 and §225.14(a)(5) require private nonprofit organizations to be tax-exempt in order to be eligible to sponsor the SFSP. As a result, SFSP sponsors that have had their tax-exempt status automatically revoked by the IRS are not eligible for participation in SFSP. This memorandum is intended to provide guidance to SFSP State agencies with sponsors that have had their non-profit tax-exempt status revoked. Guidance for the Child and Adult Food Program and the School Meals Programs will be issued separately.

According to the IRS, most tax-exempt organizations are required to file an annual return or notice with the IRS. Exceptions to this requirement include governmental and many faith-based organizations. Pursuant to authority in Section 6033(j) of the Internal Revenue Code of 1986, the IRS must automatically revoke the tax exemption of any private nonprofit organization that fails to satisfy its filing requirement for three consecutive years. The IRS has in place an application process in which organizations may seek reinstatement of tax-exempt status after automatic revocation. Such reinstatements are generally effective on the date of the IRS determination, but retroactive reinstatement may be requested. Additional information about automatic revocation of tax-exempt status may be found at: <http://www.irs.gov/charities/article/0,,id=239696,00.html>.

Recently, the IRS initiated this automatic tax-exemption revocation. It has subsequently come to our attention that a number of SFSP sponsors may have been affected and had their tax-exempt status revoked. Section 13(q) of the NSLA [42 USC 1761(q)] and SFSP regulations at 7 CFR §225.11(c) require State agencies to terminate the SFSP agreement with any sponsor determined to be seriously deficient. As discussed above, a private nonprofit sponsor must be tax-exempt under the Internal Revenue Code of 1986 in order to be eligible for SFSP participation. Thus, the revocation of a sponsor's tax-exempt status is a failure by the sponsor to meet a fundamental SFSP eligibility requirement and a serious deficiency requiring a State agency to terminate its agreement with the affected sponsor.

By July 1, 2011, all SFSP State agencies must review the IRS Automatic Revocation of Exemption List (List) and determine whether any of the State agencies' approved SFSP sponsors are listed. The List, which is organized by State, may be found at: <http://www.irs.gov/charities/article/0,,id=240099,00.html>. Additionally, State agencies must check the List for any sponsor whose application to participate in SFSP is pending. Applicant sponsors appearing on the IRS list may not be approved.

If a State agency determines that an approved SFSP sponsor has had its tax-exempt status automatically revoked, the State agency must inform the sponsor that it is seriously deficient and its SFSP participation will be terminated in accordance with 7 CFR §225.11(c). However, as required by SFSP statutory and regulatory authorities, the State agency must provide the sponsor a reasonable opportunity to correct the serious deficiency. In general, a State agency should require corrective action for this serious deficiency within 10 business days of receipt of the notice.

For the summer of 2011, the only appropriate corrective action would be a sponsor's submission of documentation from the IRS indicating that (a) the sponsor or the part of the organization under which the sponsor is operating continues to be tax-exempt under Section 501(a) of the Internal Revenue Code of 1986 or (b) the organization has submitted an application to the IRS for reinstatement of tax-exempt status. All corrective action related to the revocation must be completed by July 29, 2011, in order for the sponsor to submit SFSP claims for July. No sponsor that has had its tax-exempt status automatically revoked may continue to participate in SFSP beyond July, unless the State agency determines that appropriate corrective action as described above has been approved.

Termination of SFSP participation based on automatic revocation of a sponsor's tax-exempt status is subject to appeal under the procedures described in Section 13(q) of the NSLA and 7 CFR §225.13. If a sponsor appeals its termination, the sponsor may continue to operate the SFSP during the pendency of the appeal process. If the State agency's termination is overturned or otherwise rescinded, a sponsor will be eligible for reimbursement for valid claims for meals served during the appeal process [7 CFR §225.13(b)(1)].

Additional guidance on proper procedures and corrective action related to ongoing notice of revocation of tax-exempt status for SFSP will be provided at a later date.